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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

KARLS, SHAY LYNN

ART UNIT PAPER NUMBER

1744

DATE MAILED: 08/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/659,539	Applicant(s) DOCHTERMAN ET AL.	
	Examiner Shay L. Karls	Art Unit 1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 6/19/06.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The independent claims 1, 11, 12 and 20 all include the limitation that the scraper conforms to the internal shape of the barrel. This limitation is considered to be new matter since it is not supported in the original disclosure. Applicant must remove the new matter from the claims or show support for the new matter in the original disclosure.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 20 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 20, line 7 states “a second arm having a first arm pivot end” however this is confusing since the first arm has a “first arm pivot end”. Examiner believes that the limitation should read “as second arm having a second arm pivot end”. Please correct or clarify.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8, 11-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Lops (USPN 5692261).

Lops teaches an apparatus comprising a first arm (14) having a first arm pivot end and a second arm (12) having a second arm pivot end and a cleaner end (24). The second arm pivot end is pivotally connected to the first arm pivot end (16). There is an elastic squeegee (col. 2, lines 28-31) connected to the second arm cleaner end.

With regard to claims 2 and 14, the first arm comprises a first arm guide defining an offset insertion guide (figure 2 shows the offset guide as the expanded portion of 14).

With regards to claims 3 and 15, the first arm comprises a first arm guide defining a spreader body (figure 1 shows how the bottom portion of 14 is wider than the top and middle portion of 14).

With regards to claims 4 and 16, the first arm comprises a first arm guide defining a tip encasing offset (figure 3 shows the first arm 14 with the expanded bottom portion encasing the second arm cleaning end).

With regards to claims 5 and 12-13, the first arm comprises a compaction cavity, wherein at least a portion of the second arm is adapted to nest in the compaction cavity of the first arm (figure 1 and 3). The first arm has a base wall and a first and second sidewall defining the

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compaction cavity (figure 1, right most and left most wall form the sidewalls and the bottom wall is the base wall). The second arm has a center wall, wherein at least a portion of the center wall fits within the compaction cavity (bottom portion of 12 fits within the upper portion of 14, figure 3).

With regards to claims 6-7 and 17-18, there is a position lock adapted to secure the first arm in relation to the second arm (16). The position lock is one hand operable causing the apparatus to flip open or closed.

With regards to claims 8 and 19, there is a closed position retention mechanism to secure the first and second arms in a closed position (26, figure 5).

With regards to claim 11, the first and second arms are connected so that they extend to a cleaning position (figure 1) and compact to a storage position (figure 3).

Claims 1-10 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Young (USPN 4777694).

Young teaches an apparatus comprising a first arm (2) having a first arm pivot end and a second arm (3) having a second arm pivot end and a cleaner end (7). The second arm pivot end is pivotally connected to the first arm pivot end (10). There is an elastic squeegee (7) connected to the second arm cleaner end.

With regard to claim 2, the first arm comprises a first arm guide defining an offset insertion guide (2a).

With regards to claim 3, the first arm comprises a first arm guide defining a spreader body (figure 1).

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With regards to claim 4, the first arm comprises a first arm guide defining a tip encasing offset (2a).

With regards to claims 6-7, there is a position lock adapted to secure the first arm in relation to the second arm (8). The position lock is one hand operable causing the apparatus to open or closed.

With regards to claim 8, there is a closed position retention mechanism to secure the first and second arms in a closed position (8).

With regards to claim 9, there is a friction engagement tab (3b) connected to the second arm, the friction engagement tab is adapted to frictionally engage the first arm.

With regards to claim 10, the second arm cleaner end defines a pear shaped guide aperture for controlling the pivoting of the squeegee (2a, 3a).

With regards to claim 20, there is an elastic squeegee (7) and a first arm (2) having a first arm pivot end and a cleaner end defining a pear shaped aperture (2a, 3a) for controlling pivoting of the elastic squeegee. There is a second arm (3) having a second arm pivot end pivotally connected to the first arm pivot end.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 and 11-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Belleau et al. (USPN 5842488) in view of Lops.

Belleau teaches a lotion applicator comprising a first arm (22) having a first arm pivot end and a second arm (32) having a second arm pivot end and a cleaner end (108). The second arm pivot end is pivotally connected to the first arm pivot end (50).

With regard to claims 2 and 14, the first arm comprises a first arm guide defining an offset insertion guide (48).

With regards to claims 3 and 15, the first arm comprises a first arm guide defining a spreader body (figure 2 shows the shape of 22. Since the applicant did not disclose what the shape of a spreader body is, any body could be considered a spreader).

With regards to claims 4 and 16, the first arm comprises a first arm guide defining a tip encasing offset (figure 1, shows the first arm 22 encasing the second arm cleaning end).

With regards to claims 5 and 12-13, the first arm comprises a compaction cavity, wherein at least a portion of the second arm is adapted to nest in the compaction cavity of the first arm (figure 1). The first arm has a base wall (figure 4 element 62) and a first and second sidewall (64, 65) defining the compaction cavity (figure 4). The second arm has a center wall, wherein at least a portion of the center wall fits within the compaction cavity (figure 1).

With regards to claims 6-7 and 17-18, there is a position lock adapted to secure the first arm in relation to the second arm (50). The position lock is one hand operable causing the apparatus to flip open or closed.

With regards to claims 8 and 19, there is a closed position retention mechanism to secure the first and second arms in a closed position (50).

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With regards to claim 9, there is a frictional engagement tab (98 or 84) on the second arm for frictionally engaging the first arm.

With regards to claim 11, the first and second arms are connected so that they extend to a cleaning position (figure 2) and compact to a storage position (figure 1).

Belleau teaches all the essential elements of the claimed invention however fails to teach that the cleaning end of the applicator is made from an elastic material such as rubber. Lops teaches a lotion applicator wherein the cleaning end is made from a rubber material. It would have been obvious to modify Belleau's applicator with a rubberized applicator as taught by Lops so that it can be washed to remove any excess lotion or cream after use (col. 2, lines 40-42).

Claims 1-9 and 11-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mandigo (USPN D381765) in view of Lops.

Mandigo teaches a lotion applicator comprising a first arm (figure 1, right section) having a first arm pivot end and a second arm (figure 1, left section) having a second arm pivot end and a cleaner end (figure 1, round section on left section). The second arm pivot end is pivotally connected to the first arm pivot end (figure 1, hinge between right and left sections).

With regard to claims 2 and 14, the first arm comprises a first arm guide defining an offset insertion guide (figure 1, block on right section).

With regards to claims 3 and 15, the first arm comprises a first arm guide defining a spreader body (figure 1, round section on right section).

With regards to claims 4 and 16, the first arm comprises a first arm guide defining a tip encasing offset (figure 1, block on right section).

With regards to claims 5 and 12-13, the second arm comprises a compaction cavity, wherein at least a portion of the first arm is adapted to nest in the compaction cavity of the second arm (figure 7). The second arm has a base wall and a first and second sidewall defining the compaction cavity (figure 1, hollow block on left section). The second arm has a center wall, wherein at least a portion of the center wall fits within the compaction cavity (figure 1, block on right section).

With regards to claims 6-7 and 17-18, there is a position lock adapted to secure the first arm in relation to the second arm (figure 1, block and hollow block). The position lock is one hand operable causing the apparatus to flip open or closed.

With regards to claims 8 and 19, there is a closed position retention mechanism to secure the first and second arms in a closed position (figure 1, block and hollow block).

With regards to claim 9, there is a frictional engagement tab (figure, 1 hollow block) on the second arm for frictionally engaging the first arm.

With regards to claim 11, the first and second arms are connected so that they extend to a cleaning position (figure 1) and compact to a storage position (figure 7).

Mandigo teaches all the essential elements of the claimed invention however fails to teach that first arm comprises the compaction cavity and that the second arm is adapted to nest in the compaction cavity. Additionally, Mandigo fails to teach that the cleaning end of the applicator is made from an elastic material such as rubber. It would have been obvious to modify Mandigo so that the hollow block on the left section and the solid block on the right section were switched. Reversal of parts is an obvious modification that has been considered to be within the level of ordinary skill in the art to follow (*In re Gazda*, 219 F.2d 449, 104 USPQ

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400 (CCPA 1955)). Additionally, Lops teaches a lotion applicator wherein the cleaning end is made from a rubber material. It would have been obvious to modify Mandigo's applicator with a rubberized applicator as taught by Lops so that it can be washed to remove any excess lotion or cream after use (col. 2, lines 40-42).

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stamm (USPN 2749565) in view of Baldwin (USPN 4962607).

Stamm teaches a gun cleaning device comprising a scraper (24) and a first arm (18) having a first arm pivot and a cleaner end, the cleaner end defining a pear shaped guide aperture (21) for the scraper. The pear shaped aperture controls the pivoting of the scraper. There is a second arm (9) having a second arm pivot connected to the first arm pivot end. The second arm (9) pivots with respect to the first arm (18) (figure 1 shows the arms pivoted). Stamm also teaches using other accessories (25) on the end of the gun cleaner, however fails to teach using a rubberized elastic scraper. Baldwin teaches a rubberized bore (10) cleaning attachment that is attached to a rod (30) in the same manner as taught by Stamm. It would have been obvious to use the cleaning attachment of Baldwin on the gun cleaning device as taught by Stamm since not all gun barrel have a consistent diameter. The attachment as taught by Baldwin will allow for uniform contact throughout the barrel of the gun when cleaning since it is made from an elastomeric material which has the resiliency to allow the attachment to be compressed during movement of the cleaning tool through the gun barrel (col. 1, lines 47-53; col. 4, lines 53-68).

Response to Arguments

Applicant's arguments filed 6/19/06 have been fully considered but they are not persuasive. Applicant argues that Lops, Young and Belleau all fail to teach a scraper end which

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conforms to the internal shape of the paintball marker barrel. The applicant amended the preamble of the claims to read “for a paintball marker having a barrel with an internal shape”. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Thus the prior art is capable of performing the claimed intended use and therefore meets the claim. Additionally, the applicant fails to provide any information regarding the dimensions of the barrel and therefore, the barrel could be any size. The limitations that the applicant added to claim would add structure to a method claim however the present claim is an apparatus claim. The limitation that the scraper conforms to the internal shape of the barrel would hold patentable weight in a method claim however, does not add any structural limitations to the present claim since the dimensions of the barrel are unknown. Therefore lacking any structure for the barrel, the references of Lops, Young and Belleau are capable of cleaning a barrel similar in shape to the reference’s squeegees. Given that the reference’s squeegees are made from resilient materials, it can be determined that the scraper will conform to the internal shape of any apparatus that is being cleaned.

The applicant also argues that Stamm fails to teach the use of a paintball marker cleaning device having an arm with a pivot, however this is incorrect since figure 1 of Stamm shows a first arm (18) and second arm (9) being pivotally connected. The second arm pivots with respect to the first arm.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shay L. Karls whose telephone number is 571-272-1268. The examiner can normally be reached on 7:30-5:00 M-Th, alternating F.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



SLK
8/22/06



GLADYS JP CORCORAN
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